

FAIR HOUSING

Update

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The Human Factor

Personalities shape even the “simplest” fair housing cases

By the Seattle Office for Civil Rights

There is no such thing as a typical fair housing case. Even the simplest-sounding situation can turn out to be complicated – especially if charging parties and respondents come to the table with preconceived ideas of what a “charge” signifies, how SOCR conducts its investigation, and what a settlement should look like.

Take the experience of Patricia Casey, who wanted to sublet a unit in Hillside Homes, a condominium complex, in November, 2003. (Note: all names in this article are fictitious.) The owner, Ms. Henriksen, asked if she had children. When Ms. Casey admitted she did, Ms. Henriksen said, “Sorry, this complex is adults-only.”

Ms. Casey contacted SOCR, then called the condo owners back for more specific information. Mr. Henriksen, the co-owner, confirmed his wife’s earlier statement – “Yes, this is an adult-only building.”

When SOCR’s investigator issued a “Request for Information” to the respondents, the Henriksens included a letter to their neighbors indicating they would try to keep the complex adult-only. There was no written policy, nor were the condominium owners organized as a business association. The adult-only policy may have been simply an informal agreement among like-minded neighbors, or a coincidence.

With “smoking gun” evidence like that, the investigation concluded quickly with a Finding of Reasonable Cause. But the end of an investigation is not always the end of the story. Settlement negotiations bogged down on both sides. Even after the law was explained to them, the Henriksens still felt they’d done nothing wrong. They didn’t see how a preference for an “adult-only community” was a violation of law. For her part, Ms. Casey felt that SOCR’s proposed settlement should include a substantial cash award, far beyond any actual financial damages she had suffered.

Both sides struggled to acknowledge the realities of the law and the legal process. It looked like the case would have to go to the City of Seattle’s Law Department. Perhaps the vision of further delays and lawyers’ fees put all sides in the mood for a compromise. In the end, Ms. Casey agreed to accept \$725, the equivalent of one month’s rent, and the Henriksens agreed to attend fair housing training, as well as to pledge not to retaliate in any way against Ms. Casey. With the settlement signed, our “easy” case reached a difficult closure.

Landlord Jeffrey Breck was furious when he received charging papers from SOCR alleging that he had discriminated against Maria Perdina because her daughter was African American. He believed he had done nothing wrong, but that we would take her word over his.

Maria Perdina told SOCR that Mr. Breck had refused to repair her broken heater and had issued her an eviction notice after Ms. Perdina had contacted SOCR. The allegations, if true, would constitute retaliation and would be a blatant violation of fair housing laws.

But SOCR’s investigation revealed a very different picture. Mr. Breck was able to show that all of the tenants in his building belong to ethnic minorities. He contended that he had made more repairs to Ms. Perdina’s unit than to any other in the building. He also demonstrated that Ms. Perdina owed nearly \$2,000 in rent, and that he had posted a Three-Day Notice to Pay or Vacate just before Ms. Perdina had contacted SOCR. Ms. Perdina had not been evicted but had left her tenancy of her own accord.

Faced with this evidence, SOCR concluded that no violation of fair housing law had occurred. This time a complicated case turned out to be simply without merit. And Mr. Breck? He still was annoyed at the time he’d spent defending his actions. But he also came away with a better appreciation of the neutrality of fair housing enforcement agencies.

Have a question about fair housing in Seattle? Call the Seattle Office for Civil Rights at 206-684-4500 (TTY 206-684-4503), or find SOCR on the Web at www.seattle.gov/civilrights.

Questions & Answers

Q. Is it okay for manager Joe Thomas to advertise his rental apartment this way? "One bedroom unit. Ideal for mature person. Quiet neighborhood, many amenities. Close to St. Martin's Church."

A. Under fair housing laws, it is not legal to advertise any preference for or against a "protected class" of persons. Here's what the federal Fair Housing Act (FHA) says about advertising:

"It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination."

Remember that local fair housing laws include other protected classes, such as marital status, age or sexual orientation—see www.metrokc.gov/dias/ocre/FHlaws.htm for a complete list.

Be sure to use caution when using advertising, because ads that designate the type of tenant desired can often cross the line into stating a preference for or limitation against certain groups. For example, most prospective tenants will assume that "mature person" means that Mr. Thomas is looking for a single tenant or a retiree, or

that he does not want families with children. Also, while it's fine to refer to landmarks, using a landmark such as St. Martin's Church can be construed as implying a preference for members of that church.

Consider using advertising that alerts homeseekers to the size and location of the unit, the monthly rental price, and any features which would make the unit desirable, such as included utilities, laundry room, pool, etc. This will assist the prospective tenant in matching their needs with your openings. Mr. Thomas should think about limiting his advertising to "One-bedroom unit. Quiet neighborhood, many amenities" (and maybe expand on those amenities!).

Keep in mind that even if your rental property is exempt from the Fair Housing Act because you do not own four properties, all advertisements are covered by the FHA (and local fair housing laws may apply where the owner has fewer properties). Also, these advertising rules apply to all written notices or oral statements by someone engaged in the sale or rental of a dwelling. Written notices and statements include applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used in the sale or rental process. For an online list of words that you should avoid in ads, see www.metrokc.gov/dias/ocre/advertise.htm

Fair housing posters and logos are not required but displaying them in your advertisements or in your common areas and leasing offices is a great way to show that your housing facility complies with fair housing laws. Some housing providers use the Equal Housing Opportunity logo to show that they do business in compliance with fair housing laws. Free posters are available from the fair housing agencies for each jurisdiction. Want to use the Equal Housing Opportunity symbol in your ads? You can get a copy of the logo online at www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm.

Q. A gay couple who applies for rental of a one-bedroom apartment meets the rental criteria established by property manager Jill Green. Jill advises them that they cannot rent the advertised one-bedroom unit, but must wait for an available two-bedroom apartment. Does this violate fair housing laws?

A. Whether this is illegal discrimination depends on where the apartment complex is located. The federal Fair Housing Act does not include sexual orientation or marital status as protected classes, but many local fair housing ordinances do. City of Seattle, City of Tacoma and (unincorporated) King County cover both, and Washington state covers marital status. So if the apartment complex was in one of the geographical areas covered by these local ordinances, Ms. Green should have let the gay couple make their own choice of unit.

In these local jurisdictions, it is not allowed to make rental or sales decisions based on a person's sexual orientation or marital status. "Sexual orientation" is generally defined as including male or female heterosexuality, bisexuality, or homosexuality, and includes a person's

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Name: _____

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Questions & Answers

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attitudes, preferences, beliefs, and practices pertaining to sex (but does not include conduct that is a public or private nuisance or is unlawful under county, state, or federal law). "Marital status" is usually defined as including people who are single, married, separated, engaged, widowed, divorced or (in some jurisdictions) co-habiting. In the same way that you don't consider an applicant's race or religion in the rental decision, sexual orientation or marital status cannot be used as a criteria.

Q. While checking references, apartment manager Nelson finds out that prospective tenant Calley is a terrible housekeeper whose last apartment was always unkempt and unclear. He decides not to rent to Calley. Is Nelson discriminating?

A. Fair housing laws prohibit housing providers from taking into account a prospective tenant's protected class (things like the applicant's race, sex, religion, national origin, disability, family status, etc.). Rental owners and managers can utilize a variety of legitimate business criteria to determine which applicants may make good tenants.

It's a smart practice to obtain references from previous landlords or managers, because this information can provide a good indication of what sort of tenant the applicant is. In this situation, it appears that Nelson is not considering Calley's protected class -- instead, he is basing his decision on Calley's history of poor housekeeping. This is a reasonable basis on which to deny Calley rental.

Housing Case Alleging Disability Discrimination Settles for \$15,000

by Karen Peirola, King County Office of Civil Rights

You have just issued a 3-day notice to vacate to a family in your complex because one of the occupants, an adult female, threw a pizza at another tenant in their apartment and caused some damage to the light switch as she was dragged out by her family members. Okay, sounds fine--but wait! Next thing you know, you get a letter from that tenant asking you to stop any attempts to vacate her and her family from the apartment complex as a reasonable accommodation for her disability. The tenant explained that she was briefly unable to obtain medication but she now was back on her medication and stable. How should you respond?

A King County apartment complex in a similar situation denied their tenant's request for an accommodation and offered to take no further action if the family voluntarily vacated. When the family did not vacate, the complex management started eviction proceedings. Following a resolution conference with a mediator from the King County Office of Civil Rights, the owner of the apartment complex agreed to pay the family \$15,000.

As a housing provider, an outright refusal to discuss a request for a reasonable accommodation from someone who has a disability will get you into trouble. When a tenant asks to receive an accommodation as an alternative to eviction, she needs to establish a link between the lease violation and her disability. You should ask the tenant to provide a letter from her treatment provider that confirms that she has a disability, that her lease violation was a result of her disability and that she is now able to comply with the apartment rules.

In the King County case, the tenant explained that her husband lost his job and his medical coverage, and was

desperately trying to cover her medication expenses during the brief period it took him to apply for extended medical benefits. Had the apartment managers engaged in a dialogue with the tenant, they would have learned that new medical coverage was in place that would prevent her from destabilizing in the future.

Agreeing to stop an eviction would have been reasonable in that case because the tenant had shown that the lease violation was a result of a disability and that the reason for the lease violation (being off her medication) no longer existed. Don't ask the tenant to provide proof that she is actually taking her medications--that is going too far. Remember, agreeing to stop an eviction and allowing a tenant to stay does not give the tenant a green light to engage in further lease violations. If there are further lease violations, go ahead and issue notices to comply, but continue to be open to discussions with the tenant about possible accommodations to address the new violations.

Bottom line: Even when you have started an eviction, if a tenant notifies you that he or she has a disability and needs an accommodation, stop everything and start a dialogue with the tenant--it could save you a lot of money. For more information on this topic, read "Fair Housing Information Sheet # 4: Using Reasonable Accommodations To Prevent Eviction" from the Bazelon Center for Mental Health Law online at www.bazelon.org/issues/housing/infosheets/fhinfosheet#4.html. If you have any questions about this article or about other fair housing issues, contact the King County Office of Civil Rights at 206-296-7592 or 206-296-7596 TTY, or visit our web site at www.metrokc.gov/dias/ocre/HO.htm.

Upcoming Events

October 27, 2004

Free Fair Housing Training Workshop

Provided by HUD, WSHRC, SOCR and KCOCR

Jackson Federal Building

South Auditorium, 4th Floor

915 Second Avenue, Seattle, WA

9:00 a.m. - Noon

To register, contact Haberdan West at 206-296-7592. For more information, see www.metrokc.gov/dias/ocre/qtrtrain.htm

How to reach us

**Fair Housing Center of
South Puget Sound**

253-274-9523 / 1-888-766-8800

TTY 253-274-9523

King County Office of Civil Rights

206-296-7592, TTY 206-296-7596

Website: www.metrokc.gov/dias/ocre

Northwest Fair Housing Alliance

509-325-2665 / 1-800-200-FAIR

Seattle Office for Civil Rights

206-684-4500, TTY 206-684-4503

Website: www.cityofseattle.net/civilrights

**Tacoma Human Rights and
Human Services Dept.**

253-591-5151, TTY 253-591-5153

Website: www.cityoftacoma.org/HRHS

**U.S. Dept. of Housing &
Urban Development**

206-220-5170, TTY 206-220-5185

Website: www.hud.gov/offices/ftheo

Washington State

Human Rights Commission

360-753-6770 / 1-800-233-3247

TTY 1-800-300-7525

Website: www.wa.gov/hrc

About this publication

The Washington State Fair Housing Update is a quarterly publication of Fair Housing Assistance Program (FHAP) Agencies and non-profit fair housing organizations



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Fair Housing Center of South Puget Sound

Familial Status Case Against Housing Authority Settles for \$5,000+

by Dixie Shaw

In January 2004 a family contacted the Fair Housing Center of South Puget Sound (FHCSPS) complaining that management at an apartment complex owned by a local housing authority refused to let their children play outside, frequently closed the playground, and in general enforced its overly restrictive rules in a manner that discriminates against families with children. After completing testing of the subject property, the FHCSPS assisted the family in filing a discrimination complaint with the U.S. Department of Housing and Urban Development (HUD) who referred the case to the Washington State Human Rights Commission (WSHRC) for investigation and/or mediation. Both state and federal fair housing laws prohibit discrimination because of familial status, the presence of children under 18, in the household.

While the WSHRC held a fact-finding conference and conducted extensive investigation into the allegations, ultimately the parties were able to agree to resolve the matter and a pre-find settlement agreement was successfully negotiated. The terms of the agreement included \$5,000 in general settlement to the family, a waiver of over \$1,000 in prior costs the family was billed at move-out, and purging of the family's tenant file of any negative information. Additionally, the housing authority agreed to keep the play area open at all times as well as make a previously unavailable courtyard accessible to all tenants and to post/revise signage. Management at the complex will also receive fair housing training.